

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
***Bid Protest***

PlanetSpace Inc.,	)	
	)	
Plaintiff,	)	
	)	No. 09-476C
	)	Judge Block
v.	)	
	)	
United States of America,	)	
	)	
Defendant,	)	
	)	
Space Exploration Technologies	)	
Corporation and Orbital Sciences	)	
Corporation,	)	
	)	
Defendant-Intervenors	)	
	)	

**PLAINTIFF’S MOTION FOR LEAVE TO  
SUPPLEMENT THE ADMINISTRATIVE RECORD**

Pursuant to Rule 7(b) of the Rules of United States Court of Federal Claims, Plaintiff PlanetSpace Inc. respectfully requests that this Court grant PlanetSpace leave to supplement the administrative record, filed on August 13, 2009 and corrected on August 21, 2009 and August 28, 2009.<sup>1</sup>

On August 31, 2009, counsel for PlanetSpace submitted a Freedom of Information Act (“FOIA”) request to the Office of Science and Technology Policy (“OSTP”) for any records memorializing or pertaining to the OSTP’s consideration of the application of the United States Space Transportation Policy (“Space Policy”) to launch vehicles proposed to be

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<sup>1</sup> On October 1, 2009, counsel for PlanetSpace contacted counsel for the Government and for Intervenors Space Exploration Technologies Corp. and Orbital Sciences Corp. to ascertain whether they would consent to this motion, but has not yet received a response.

used in connection with NASA's International Space Station Commercial Resupply Services ("ISS CRS") procurement (No. NNJ08ZBG001R) or its 2007 Commercial Orbital Transportation Services ("COTS") procurement (No. JSC-COTS-1). The OSTP responded to this FOIA request on September 21, 2009,<sup>2</sup> indicating that it found various responsive documents. PlanetSpace seeks to supplement the administrative record with these documents, which are attached hereto as Exhibit 1.

Compliance with the Space Policy is one of the issues in this bid protest. *See, e.g.,* PlanetSpace Aug. 28, 2009 Mem. at 27-31; Gov't Sept. 18, 2009 Mem. at 35-40. The Government has proposed for inclusion in the administrative record two documents (*i.e.*, Documents 43-1 & 43-2) relating to discussions between NASA and OSTP official concerning the Taurus II, during the COTS and ISS CRS procurements, as evidence of its purported compliance with the Space Policy. *See* Gov't Sept. 18, 2009 Mem. at 35-40. The documents that PlanetSpace seeks to add to the administrative record also constitute the written record regarding those discussions. These documents are thus directly relevant to the decision-making at issue in this bid protest, and should be part of the administrative record. *See* RCFC, App. C ¶¶ 22(i), (j), (p), (u).

These documents also are necessary to conceptualize and to provide at least a partial explanation of Document 43-2, which the Government seeks to add to the administrative record. *See* Gov't Sept. 17, 2009 Mot. As PlanetSpace explained in its September 21, 2009 Conditional Opposition to the Government Motion to Supplement the Administrative Record, Document 43-2 provides an incomplete picture of the Government's consideration given to the

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<sup>2</sup> Undersigned counsel received the OSTP's response on September 30, 2009.

applicability of the Space Policy to the Taurus II. If these documents are not made part of the administrative record, this Court will not have a complete picture of the consideration given to whether the Taurus II complies with the Space Policy.

PlanetSpace intends to cite to portions of these documents in its Combined Reply Memorandum in Support of its Motion for Judgment on the Administrative Record and for Permanent Injunctive Relief, and in Opposition to the Government's and Intervenor's Cross-Motions, and therefore seeks leave to supplement the administrative record with these highly relevant documents. PlanetSpace proposes that these documents be incorporated in the administrative record as follows: Exhibit 1 will be labeled "Tab 194" and numbered 31793 to 31938.

For these reasons, PlanetSpace respectfully requests that this Court grant PlanetSpace leave to supplement the administrative record to include the documents referenced above.

Respectfully submitted,

s/ Steven J. Rosenbaum

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